

## CCRB INVESTIGATIVE RECOMMENDATION

|                                                   |                                                                                            |                            |                                                        |                                    |                                 |
|---------------------------------------------------|--------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------|------------------------------------|---------------------------------|
| Investigator:<br>Matthew Chaves                   | Team:<br>Squad #7                                                                          | CCRB Case #:<br>201809650  | <input checked="" type="checkbox"/> Force              | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|                                                   |                                                                                            |                            | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Friday, 11/09/2018 4:20 PM    | Location of Incident:<br>Atlantic Avenue-Barclays Center Train Station; TD 32 Stationhouse | Precinct:<br>78            | 18 Mo. SOL<br>5/9/2020                                 | EO SOL<br>12/24/2020               |                                 |
| Date/Time CV Reported<br>Tue, 11/13/2018 12:00 AM | CV Reported At:<br>IAB                                                                     | How CV Reported:<br>E-mail | Date/Time Received at CCRB<br>Mon, 11/19/2018 11:13 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |
|             |              |
|             |              |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. POF Taina Pacheco | 10883  | 961987 | TB DT32 |
| 2. POM Mohamed Shaw  | 26253  | 964289 | TB DT32 |

| Witness Officer(s)        | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POF Samantha Salcedo   | 15331     | 961229 | TB DT32  |
| 2. POF Thiffany Monderson | 06265     | 961959 | TB DT32  |
| 3. SGT Anthony Ramos      | 05125     | 933226 | TB DT32  |
| 4. POM Michael Billotto   | 13227     | 953684 | TB DT32  |
| 5. POM Jonathan Grajales  | 18182     | 952807 | TB DT32  |
| 6. POM Giampiero Nencini  | 10811     | 961974 | TB DT32  |
| 7. POM Randy Adams        | 08938     | 964863 | TB DT32  |
| 8. POM Arsalan Alam       | 18381     | 961603 | TB DT32  |
| 9. SGT Fernando Cordero   | 00874     | 945616 | TB DT32  |
| 10. SGT Lael Pendleton    | 04966     | 930925 | TB DT32  |

| Officer(s)          | Allegation                                                                                                                                                    | Investigator Recommendation |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| A.POF Taina Pacheco | Abuse: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco stopped § 87(2)(b)                                      |                             |
| B.POF Taina Pacheco | Abuse: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco interfered with § 87(2)(b)'s use of a recording device. |                             |
| C.POM Mohamed Shaw  | Abuse: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Mohamed Shaw interfered with § 87(2)(b)'s use of a recording device.  |                             |

| Officer(s)          | Allegation                                                                                                                                   | Investigator Recommendation |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| D.POF Taina Pacheco | Abuse: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco arrested § 87(2)(b)                    |                             |
| E.POF Taina Pacheco | Force: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco used physical force against § 87(2)(b) |                             |
| F.POF Taina Pacheco | Abuse: At the TD 32 Stationhouse in Brooklyn, Police Officer Taina Pacheco damaged § 87(2)(b)'s property.                                    |                             |
| G.POF Taina Pacheco | Force: At the TD 32 stationhouse in Brooklyn, Police Officer Taina Pacheco used physical force against § 87(2)(b)                            |                             |

## Case Summary

On November 13, 2018, § 87(2)(b) and § 87(2)(b) independently filed complaints with IAB via e-mail. They were referred to the CCRB, where they were received on November 19, 2018.

At approximately 4:20 p.m. on November 9, 2018, § 87(2)(b) and her friend, § 87(2)(b) entered a subway platform within the Atlantic Avenue-Barclays Center station in Brooklyn. As the women walked along the platform, Police Officer Taina Pacheco, accompanied by Police Officer Mohamed Shaw, of Transit Bureau District 32 (TD 32) stopped § 87(2)(b) for allegedly failing to pay her fare (**Allegation A: Abuse of Authority: Stop:** § 87(2)(g)).

§ 87(2)(b) gave Police Officer Shaw her MetroCard and asked the officers to confirm that she had just used it. § 87(2)(b) took out her cellphone and began recording the incident, but the officers repeatedly ordered her not to do so (**Allegation B: Abuse of Authority: Interference With Recording:** § 87(2)(g), **Allegation C: Abuse of Authority: Interference With Recording:** § 87(2)(g)).

Police Officer Shaw tested § 87(2)(b)'s MetroCard and learned that it had been used. The officers then arrested § 87(2)(b) (**Allegation D: Abuse of Authority: Retaliatory Arrest:** § 87(2)(g)).

The officers grappled with § 87(2)(b) and tried to handcuff her. Police Officer Pacheco allegedly punched § 87(2)(b) in the stomach (**Allegation E: Force: Physical Force:** § 87(2)(g)). Police Officer Thiffany Monderson and Sergeant Anthony Ramos of TD 32 responded to the incident, along with many other officers who formed a perimeter around § 87(2)(b).

During her arrest processing at the TD 32 stationhouse, § 87(2)(b) refused to let Police Officer Pacheco search her, and Police Officer Pacheco struggled to control her (**Allegation F: Force: Physical Force:** § 87(2)(g)). Police Officer Pacheco allegedly used a pen to damage to § 87(2)(b)'s jacket (**Allegation G: Abuse of Authority: Property Damaged:** § 87(2)(g)).

The investigation obtained BWC video from eight officers. Police Officer Pacheco's BWC video (**Board Review 01**) is relevant to **Allegations A** through **E**, while Police Officer Arsalan Alam of TD 32's video is relevant to **Allegations F** and **G** (**Board Review 02**). Police Officer Shaw's BWC was broken on the incident date. He documented this in his memo book and notified his command's desk officer as required.

The investigation also obtained two civilian cellphone videos relevant to the FADO allegations. § 87(2)(b) recorded one of these videos (**Board Review 03**), while a witness named § 87(2)(b) recorded the other (**Board Review 04**).

The investigation requested surveillance video of the incident area from the MTA. However, the MTA provided video of the wrong time range that did not show the

incident. By the date that the MTA provided this video to the investigation, the correct video had been automatically erased by the MTA's surveillance system.

### **Findings and Recommendations**

#### **Allegation A – Abuse of Authority: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco stopped § 87(2)(b)**

§ 87(2)(b) provided a telephone statement on December 3, 2018 (**Board Review 05**) and was interviewed at the Stone Avenue branch of the Brooklyn Public Library on December 21, 2018 (**Board Review 06**). Station Agent § 87(2)(b) provided a telephone statement on February 21, 2019 (**Board Review 07**) and was interviewed at the CCRB on March 15, 2019 (**Board Review 08**). Police Officer Pacheco and Police Officer Shaw were interviewed on June 17, 2019 (**Board Review 09, Board Review 10**).

In their sworn statements, Station Agent § 87(2)(b) and § 87(2)(b) consistently described the start of this incident. § 87(2)(b) and § 87(2)(b) waited on a lengthy line at Station Agent § 87(2)(b)'s booth, and § 87(2)(b) paid to add a single ride's worth of credit to her MetroCard.

Station Agent § 87(2)(b) did not see how § 87(2)(b) or § 87(2)(b) passed through the turnstiles into the platform area. In her sworn statement, § 87(2)(b) stated that she swiped her MetroCard at a turnstile, entered the platform area legally, and then waited by the emergency gate for § 87(2)(b) to locate her MetroCard and swipe through. As she waited, she helped hold the gate open for a woman who was entering the platform area with a baby stroller.

It is undisputed that as § 87(2)(b) and § 87(2)(b) walked along the subway platform, Police Officer Shaw blocked § 87(2)(b)'s path and told her to stop.

In her interview, Police Officer Pacheco stated that she first saw § 87(2)(b) walking on the track side of the turnstiles away from the emergency gate area. Police Officer Pacheco never observed § 87(2)(b) on the unpaid, public side of the turnstiles. Police Officer Pacheco did not see § 87(2)(b) open, hold, or walk through the emergency gate. Police Officer Pacheco did not see § 87(2)(b) swipe her MetroCard or otherwise pay her fare. The sole reason Police Officer Pacheco believed § 87(2)(b) did not pay her fare was that she observed § 87(2)(b) walking near the emergency gate as opposed to the turnstiles.

Police Officer Shaw did not make any independent observation of § 87(2)(b). He carried out the stop based on Police Officer Pacheco's report.

Where a police officer entertains a reasonable suspicion that a person has committed, is committing, or is about to commit a felony or misdemeanor, New York Criminal Procedure Law authorizes a forcible stop and detention of that person. Innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand. (*People v. De Bour*, 40 N.Y.2d 210 (1976)) (**Board Review 11**)

§ 87(2)(g)

**Allegation D – Abuse of Authority: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco arrested** § 87(2)(b)

Police Officer Pacheco prepared § 87(2)(b)'s arrest report (**Board Review 14**). The report charged § 87(2)(b) with § 87(2)(b). The narrative states “At TPO PO observed defendant walk through the emergency gate to avoid legal payment of fare. Defendant was asked for identification and refused. PO attempted to place defendant in handcuffs and defendant started to flare one arm and held a pole with other hand to avoid being handcuffed.”

Police Officer Pacheco’s BWC video recorded the portion of the incident after the officers stopped § 87(2)(b). At timestamp 1:20, § 87(2)(b) gives Police Officer Shaw her MetroCard and requests that he test it. Police Officer Pacheco calls Sergeant Pendleton on her cellphone and describes § 87(2)(b) as “very disrespectful” (timestamp 3:38). Over the course of the call, Police Officer Pacheco does not describe any evidence that § 87(2)(b) committed theft of service or any other crime. Instead, she repeatedly notes that § 87(2)(b) will not provide ID, and she asks if she should “bring her in or whatever.” Sergeant Lael Pendleton of TD 32 was interviewed on July 26, 2019 (**Board Review 13**). In his interview, Sergeant Pendleton described this call as “strange,” and stated that it was unusual for an officer to call him about something so minor as theft of service.

At timestamp 5:06 in Police Officer Pacheco’s BWC, Police Officer Shaw states “I’ll go check it” and walks out of the frame with § 87(2)(b)'s MetroCard. At timestamp 5:14, Police Officer Pacheco tells § 87(2)(b) to turn around and put her hands behind her back. With both hands, she grabs hold of § 87(2)(b)'s left arm. Between Police Officer Shaw walking away and Police Officer Pacheco grabbing her, § 87(2)(b) stands quietly with her back against the platform wall. As Police Officer Pacheco grabs her, § 87(2)(b) does not comply with the order to put her hands behind her back, and Police Officer Pacheco fails to handcuff her. Police Officer Monderson of TD 32 enters the video and encourages § 87(2)(b) to comply.

In her interview, Police Officer Pacheco stated that when Police Officer Monderson approached the incident, she told Police Officer Pacheco that § 87(2)(b) had not paid her fare. However, Police Officer Pacheco’s BWC video (**Board Review 01**) does not show Police Officer Monderson making this statement, § 87(2)(g) (Police Officer Monderson’s BWC video does not cover the relevant portion of the incident).

In her interview, Police Officer Pacheco stated that after Police Officer Monderson told her that § 87(2)(b) had not paid her fare, she decided to handcuff and arrest § 87(2)(b). She based this decision on the fact that § 87(2)(b) would not comply with orders to keep her hands out of her pockets, would not provide her ID, and, according to Police Officer Monderson, had not paid her fare. Police Officer Pacheco arrested § 87(2)(b) for “walking through the gate,” “not following a lawful order,” “not providing her identification,” and “being disorderly.” Police Officer Pacheco specified that § 87(2)(b) was being disorderly by “not being compliant” and cursing at the officers.

While Police Officer Pacheco was trying to handcuff and arrest § 87(2)(b), Police Officer Shaw spoke to Station Agent § 87(2)(b) at her booth. She tested § 87(2)(b)'s MetroCard and told Police Officer Shaw that the card had recently been used.

At timestamp 6:12 in Police Officer Pacheco's BWC video, Police Officer Shaw reenters the frame holding § 87(2)(b)'s MetroCard and states “It did show that it's used but we don't know what time, but it was used.” § 87(2)(b) takes the MetroCard from Police Officer Shaw and says, “thank you.” She attempts to walk away, but Police Officer Shaw and Police Officer Pacheco physically prevent her from leaving and try to handcuff her. The video then ends. It is undisputed that § 87(2)(b) was subsequently arrested for § 87(2)(b) (Board Review 14).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco interfered with § 87(2)(b)'s use of a recording device.**

**Allegation C – Abuse of Authority: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Mohamed Shaw interfered with § 87(2)(b)'s use of a recording device.**

It is undisputed that, prior to Police Officer Pacheco arresting her, § 87(2)(b) attempted to record this incident with her cellphone. § 87(2)(b) recorded a short

portion of the incident (**Board Review 03**), and this video coincides with a portion of Police Officer Pacheco's BWC video (**Board Review 01**). At approximately 2:15 of Police Officer Pacheco's BWC video, Police Officer Pacheco asks § 87(2)(b) to put her phone in her pocket. At 2:20, § 87(2)(b) asks Police Officer Pacheco "I got to stop recording?" and Police Officer Pacheco responds by stating "yeah." At 2:22, Police Officer Pacheco states "That's a direct order I'm telling you. Put your phone in your pocket." Between 4:46 and 5:07 of the BWC video, Police Officer Shaw and § 87(2)(b) argue about § 87(2)(b)'s right to record the incident. Police Officer Shaw says that while § 87(2)(b) can record the incident, § 87(2)(b) cannot.

Police Officer Pacheco told the investigation that § 87(2)(b)'s holding her phone was a safety problem because she could have called or texted someone to come to the scene. When asked by the investigation if she saw that § 87(2)(b) was recording with her phone, Police Officer Pacheco said, "I wasn't paying attention to what she was doing with her phone."

Police Officer Shaw acknowledged telling § 87(2)(b) to give her phone to § 87(2)(b). He explained that the officers wanted § 87(2)(b)'s hands to be free for safety reasons, particularly so that they could see whether there was anything hidden behind the phone.

According to NYPD Patrol Guide Procedure 203-29, individuals have a right to lawfully observe and/or record police activity including, but not limited to, detentions, searches, arrests or uses of force. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are observing/videotaping (**Board Review 12**).

§ 87(2)(g)

[REDACTED]

**Allegation E – Force: At the Atlantic Avenue-Barclays Center Train Station in Brooklyn, Police Officer Taina Pacheco used physical force against § 87(2)(b)**

In her sworn statement, § 87(2)(b) described holding on to a payphone with her right arm while Police Officer Pacheco twisted her left arm behind her back. Then, Police Officer Pacheco punched § 87(2)(b) once in the lower abdomen, slightly to the left of her navel, with a closed fist. § 87(2)(b) similarly alleged that Police Officer Pacheco punched her in the stomach during her telephone statement, but did not describe this use of force in further detail.

In her interview, Police Officer Pacheco denied striking § 87(2)(b) in any way. She denied seeing another officer strike § 87(2)(b) and did not observe any reason for an officer to strike her. In his interview, Police Officer Shaw also denied striking or seeing another officer strike § 87(2)(b).

The investigation reviewed the collected BWC and civilian cellphone video. It does not appear that any of the video shows an officer, including Police Officer Pacheco, striking § 87(2)(b). However, the video does not offer comprehensive coverage of the incident. The various recording cameras were moving throughout the incident, a large crowd of officers and civilians formed and sometimes blocked § 87(2)(b) from view, and some of the BWCs were periodically deactivated or knocked down.

§ 87(2)(g)

**Allegation F – Abuse of Authority: At the TD 32 Stationhouse in Brooklyn, Police Officer Taina Pacheco damaged § 87(2)(b)'s property.**

**Allegation G – Force: At the TD 32 stationhouse in Brooklyn, Police Officer Taina Pacheco used physical force against § 87(2)(b)**

It is undisputed that when officers brought her before the TD 32 stationhouse desk, § 87(2)(b) complained that Police Officer Pacheco should not search her. § 87(2)(b) attempted to evade Police Officer Pacheco's search, and kicked her in the leg. Police Officer Pacheco struggled to search § 87(2)(b) and eventually officers escorted § 87(2)(b) to a holding cell.

§ 87(2)(b) also alleged that during the search, Police Officer Pacheco stood next to her and surreptitiously rubbed a broken pen on the right sleeve of her jacket so that ink stained it.

In her interview, Police Officer Pacheco denied drawing on § 87(2)(b)'s jacket.

Police Officer Alam's BWC comprehensively recorded this portion of the incident (**Board Review 02**). In the video, § 87(2)(b) stands before the stationhouse desk in handcuffs. Police Officer Pacheco approaches her, wearing blue disposable gloves. The video shows that Police Officer Pacheco's hands are empty and she is not holding any writing instrument. As Police Officer Pacheco begins to search § 87(2)(b), § 87(2)(b) shouts and tries to pull away. Police Officer Pacheco, assisted by other officers, tries to grab and stabilize § 87(2)(b). Eventually, an unseen officer issues an



order to put § 87(2)(b) in a holding cell, and she is escorted away from Police Officer Pacheco down a hallway. At no point does Police Officer Pacheco draw on § 87(2)(b)s clothing.

According to NYPD Patrol Guide Procedure 221-01, in all circumstances, any application or use of force must be reasonable under the circumstances. Force may be used when it is reasonable to place a person in custody or prevent their escape from custody (**Board Review 15**).

§ 87(2)(g)

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to four other CCRB complaints and has been named as a victim in 10 other allegations (**Board Review 16**).
  - § 87(2)(b)
  - 
  - 
  - 
  -
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 17**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 18**).
- Police Officer Pacheco has been a member of service for three years and this is the first CCRB complaint to which she has been a subject.
- Police Officer Shaw has been a member of service for two years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation.
- A request for any Notice of Claim filed regarding this incident has been submitted to the New York City Office of the Comptroller and the results will be added to the case file upon receipt.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad No.: 7

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Investigator: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Squad Leader: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|           |           |                    |       |
|-----------|-----------|--------------------|-------|
| Reviewer: | _____     | _____              | _____ |
|           | Signature | Print Title & Name | Date  |